

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3637 of 2022

Siddharth Sethia & Ors.

Versus

The State of West Bengal & Anr.

For the Petitioners : Mr. Meghajit Mukherjee, Adv.
Ms. Srijeeta Gupta, Adv.

Heard on : 02.01.2026

Judgment on : 13.02.2026

Ajay Kumar Gupta, J.:

1. Petitioners being the accused persons preferred this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), seeking quashing of the proceeding being CS/49908 of 2021 under sections 420/406/120B/34 of the Indian Penal Code (in short 'I.P.C.')

pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta including order dated 24th August, 2021.

FACTS OF THE CASE: -

- 2.** The brief facts, essential for the purpose of disposal of the instant case, are as follows: -

- a.** On 29th April, 2014, a Memorandum of Understanding (in short 'MOU') was executed between the opposite party no. 2/complainant and the petitioner no. 1 for the development of land measuring an area of 113.3574 decimals situated within the Mouza – Pathuriaghata, J.L. No. 36, P.S.- New Town, District- North 24-Parganas, belonging to the petitioners. Pursuant thereto, on 21st May, 2014, M/s Harmony Vinimay Pvt. Ltd., owned by the opposite party no. 2/complainant, issued two cheques amounting to Rs. 51 lakhs and Rs. 50 lakhs respectively in favour of M/s Intimate Promoters Pvt. Ltd., a company in which petitioner nos. 2 and 3 are directors. Petitioner no. 1 happens to be the son of Petitioner no. 2 and the husband of Petitioner no. 3. M/s. Intimate Promoters Pvt. Ltd is a family-owned company of Mr. Siddharth Sethia.

- b.** The family of Mr. Piyush Bhagat owns shares in Harmony Vinimay Pvt Ltd., and he is one of the shareholders and directors of the said company. It was agreed between the parties that the

land in question would be developed through M/s BKS Infracore LLP, an entity of the opposite party no. 2/complainant.

- c.** Subsequently, on 13th March, 2020, in order to develop the said land as per the proposal of the West Bengal Housing Infrastructure Development Corporation (HIDCO), a portion of the land was exchanged between HIDCO and M/s Intimate Promoters Pvt. Ltd.
- d.** Thereafter, on 24th August, 2021, the opposite party no. 2/complainant filed a complaint being CS/49908 of 2021 before the Court of the learned Chief Metropolitan Magistrate at Calcutta, alleging commission of offences punishable under Sections 420/406/120B/34 of the IPC. The allegation, *inter alia*, was that in or about April 2014, the petitioners had falsely represented themselves as the owners of the said land and induced the complainant to part with money on the assurance of development of the land.
- e.** On the same date, the learned Chief Metropolitan Magistrate took cognizance of the alleged offences and transferred the case to the Court of the learned Metropolitan Magistrate, 19th Court at Calcutta for its disposal. Upon receipt of records, the learned

Magistrate issued process in the nature of summons by order dated 24th August, 2021.

- f. Subsequently, on 4th December, 2021, a Non-Bailable Warrant was issued against the petitioners to secure their presence. The petitioners surrendered before the learned Trial Court on 14th March, 2021 and were released on bail. The matter was, thereafter, fixed on 29th October, 2022, for evidence before charge.
- g. Being aggrieved by and dissatisfied with the initiation and continuance of the proceeding being CS/49908 of 2021, including the order dated 24th August, 2021, the petitioners have approached this Court by filing the present petition.

SUBMISSION ON BEHALF OF THE PETITIONERS:-

- 3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners are absolutely innocent and they have been falsely implicated in the aforesaid criminal proceeding only to pressurise them to settle the dispute, although the entire dispute arose out of an MOU signed by the petitioner no. 1 and the opposite party no. 2.
- 4. It was further submitted that no criminal offences under Sections 406/420/120B of IPC are made out against the present petitioners as there is no dishonest intention at the inception of executing the

MOU between the parties. Furthermore, no property had ever been entrusted to the petitioners; rather, the amount paid as security deposit under a commercial arrangement was returned and refunded, clearly negating the allegation of cheating.

- 5.** The criminal case, lodged by the opposite party no. 2, is only on the basis of the MOU, which was executed between the parties for the development of the land of the petitioners under certain terms and conditions stipulated in the said MOU. Actually, the opposite party no. 2 failed to perform his obligation under the MOU from the very inception, as a result of which the project never commenced, and the petitioners suffered a huge loss amounting to Rs. 15.32 Crores. The complainant/opposite party no. 2 had already initiated a Civil Suit against M/s Intimate Promoters Pvt. Ltd. in respect of the same transaction apart from this proceeding. The criminal complaint has been lodged only to harass the petitioners and for their illegal gain. The dispute, whatsoever, is purely civil in nature and such dispute can be decided only by the Civil Court.
- 6.** Finally, the learned counsel submitted that this complaint was lodged in the year 2001, after expiry of more than 7 years, without explaining the inordinate delay, which clearly indicates that the criminal proceeding is only to pressurise and is a tactic adopted to

settle the dispute between the parties anyhow, and is, therefore, an abuse of the process of law. Therefore, it should be quashed to secure the ends of justice; otherwise, the petitioners would suffer irreparable loss and injury that cannot be compensated with monetary relief.

7. Learned counsel has relied upon the following judgments to support of his contention that the opposite party no. 2 failed to fulfil his part obligation within the time specified in the MOU and also to support his contention that the FIR contains no averment with regard to the fraudulent or dishonest inducement having been committed by the petitioners and/or what manner they cheated the opposite party no. 2 as under: -

i. Murari Lal Gupta Vs. Gopi Singh¹;

ii. Ram Biraji Devi & Anr. Vs. Umesh Kumar Singh & Anr.²;

iii. Suresh Vs. Mahadevappa Shivappa Danannava & Anr.³;

iv. Kunti & Anr. Vs. State of UP & Anr.⁴;

v. Indian Oil Corporation Vs. NEPC India Ltd. & Ors.⁵;

vi. Prem Kumar Vs. State of Rajasthan & Anr.⁶;

¹ (2005) 13 SCC 699;

² (2006) 6 SCC 669;

³ (2005) 3 SCC 670;

⁴ (2023) 6 SCC 109;

⁵ (2006) 6 SCC 736 : 2006 3 SCC (Cri) 188

⁶ (2020) 20 SCC 623;

- vii. Uma Shankar Gopalika Vs. State of Bihar & Anr.⁷;**
- viii. Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors.⁸;**
- ix. Sarabjit Kaur Vs. State of Punjab and Anr.⁹;**
- x. Lalit Chaturvedi & Ors. Vs. State of Uttar Pradesh & Anr.¹⁰;**
- xi. A.M. Mohan Vs. State represented by SHO and Anr.¹¹;**
- xii. Naresh Kumar & Anr. Vs. State of Karnataka & Anr.¹²;**
- xiii. Alpik Finance Ltd. Vs. P. Sadasivan & Anr.¹³**

- 8.** Despite service, none appeared on behalf of the opposite parties.
No accommodation was sought for.

DISCUSSIONS AND ANALYSIS BY THIS COURT:

- 9.** This court has carefully heard the arguments and submissions made by the learned counsel appearing on behalf of the petitioners, and upon perusal of the material available on record, it is revealed that on 29th April, 2014, an MOU was executed between the opposite party no. 2/complainant and the petitioner no. 1 for development of the aforementioned land at Pathuriaghata, New Town, North 24 Parganas, owned by the petitioners. Pursuant to the above, the complainant, through its company issued two

⁷ (2005) 10 SCC 336;

⁸ (2022) 7 SCC 124;

⁹ (2023) 5 SCC 360;

¹⁰ 2024 SCC OnLine SC 171;

¹¹ 2024 SCC OnLine SC 339

¹² 2024 SCC OnLine SC 268;

¹³ (2001) 3 SCC 513.

cheques amounting to Rs. 1.01 crore in favour of M/s Intimate promoters Pvt. Ltd., the petitioners' family-owned company. The family of Mr. Piyush Bhagat holds shares in M/s. Harmony Vinimay Pvt. Ltd., and it was agreed that development would be undertaken through M/s BKS Infraprojects LLP, an entity of the complainant. A further sum of Rs. 1 crore was allegedly paid on 16th September, 2014 to the Petitioners. Subsequently, on 13th March, 2020, a portion of the said land was exchanged between the West Bengal Housing Infrastructure Development Corporation (HIDCO) and M/s Intimate Promoters Pvt. Ltd. to facilitate development in accordance with HIDCO's proposal.

- 10.** The circumstances were known to the de facto complainant. The main allegation of the opposite party no. 2 is that the accused persons had sold the land to a third party without notifying him, and also did not refund Rs. 2.01 Crores. However, petitioners negated both the allegations by contending that Rs. 2.01 Crores had already been refunded and the property was exchanged with HIDCO for the purpose of development, when the opposite party no. 2 failed to perform his obligation under the MOU from the very inception, as a result, the project never commenced for development. Due to the delay in the commencement of development of the property, the petitioners suffer a huge loss. The

petitioners had no other option but to exchange the land with HIDCO so that their property may be developed in due course.

- 11.** Considering the above facts and circumstances of this case, this Court is required to determine whether the dispute between the parties, arising from a joint real-estate development agreement, where the project did not materialise and part of the money paid as a refundable security deposit remains unpaid, is genuinely a criminal case of cheating and criminal breach of trust? Furthermore, whether it is merely a commercial dispute resulting from a failed business arrangement/agreement that should be decided by a Civil Court?
- 12.** The prosecution case stems from an MOU dated 29th April, 2014, executed between the petitioner no. 1 and the opposite party no. 2 for the development of land. The payment of Rs. 2.01 crore was admittedly made pursuant to the said arrangement through corporate entities. The essence of the complaint is that the petitioners falsely represented themselves as owners of the land and induced the complainant to part with money.
- 13.** It is not disputed that the dispute started between the parties when the opposite party no. 2 failed to perform his obligation under the MOU. The essence of performance has expired long ago. It was not materialised.

14. Having no alternative, the petitioners have admittedly exchanged part of the land with HIDCO on 13th March, 2020, to develop the said land as per the proposal of HIDCO. The portion of the land was exchanged between HIDCO and M/s. Intimate Promoters Pvt. Ltd. It is alleged that subsequently, on 2nd March, 2021, the petitioners had sold the said land to a third party by deed of conveyance. Due to such a changed scenario, the de facto complainant lodged a complaint against the petitioners, accusing them for commission of offence punishable under Sections 406/420 of IPC read with Sections 34/120B of IPC. The allegation of the opposite party no. 2 is two folds. Firstly, the land was sold to a third party without notifying or informing the complainant and secondly, it was done without refunding the sum of Rs. 2.01 Crores taken from M/s. BKS Infraprojects LLP thereby misappropriated the said sum.

15. Before deciding the case at hand, it is essential to stipulate the terms and conditions of the MOU in verbatim as under: -

“1.....

2.....

3. Parties to jointly make efforts for causing the proposed HIDCO Road/ Panchayat Road to adjoin the Properties under Development, Parties being aware that the same is essential for development to be undertaken;

3.1.....

4. Conversion shall be the responsibility of the Owner – to be completed in 6 (six) months;

5. Sanction related approvals shall be the responsibility of the Developer;

6. Work of development to commence within 6 months + 3 months grace period of HIDCO Road passing through or adjoining the Properties Under Development and Owner causing conversion as aforesaid and there being no fetters in undertaking development interest on delay to form part of Formal Development Agreement.

7.....

8. Revenue Sharing: Owner to get 40% of Net Revenue realised from sale of saleable spaces in the development in proportion to the land belonging to the Owner (e.g. if Properties Under Development is 100 Cottahs and Property of Owner is 10 Cottahs and Net Revenue is Rs. 10 Crores, then Owner to get Rs. 40 Lacs) and Developer to get the rest. Net Revenue shall mean sale consideration realised excluding Service Tax and government duties, amounts received on account of Extras and Deposits, which shall belong to the Developer;

8.1.....

9.....

10. Security Deposit: Developer to deposit Rs. 4 Crores with the Owner as follows:

a) Rs. 101 Lacs simultaneously herewith;

c) Rs. 299 Lacs on access Road to the Properties Under Development being sanctioned and motorable.

d) Rs. 100 Lacs on Owner obtaining conversion;

10.1 Refund of above Security Deposit:

a) Rs. 200 Lacs on completion of superstructure (i.e. casting of ultimate roof). In case of phase-wise development, this refund to be in phases;

b) Rs. 200 Lacs on Completion of Construction. In case of phase-wise development, this refund to be in phases;

11.....

12.....

13. Project Finance: Developer permitted to obtain project finance at its own responsibility and risks. Owner will not be co-guarantor or borrower for any loans but will give consent to developer for borrowing from financial institutions.

14. Within 45 days, Parties to execute and register formal Development Agreement and Owner to grant registered Power of Attorney to Developer or its nominees for purposes related to sanction, construction and transfer of saleable areas;

15. Owner to be represented by Mr. Siddharth Sethia and Developer by Mr. Piyush Kumar Bhagat.”

16. Upon perusal of the MOU and the complaint made before the Learned Magistrate, this Court finds that the whole dispute arose between the parties when the development project could not be fructified in terms of the MOU. For that reason, the opposite party no. 2 had already filed a commercial suit, being CS No. 200 of 2022, against M/s. Intimate Promoters Pvt. Ltd. before the Hon’ble High Court at Calcutta, praying for reliefs therein as under: -

“a) Decree in favour of the plaintiff no. 1 for a sum of Rs. 2,01,00,000/- (two crores one lakh rupees only) paid by the plaintiff no. 1 to the defendant.

b) Decree in favour of the plaintiff no. 1 for a sum of Rs. 2,61,11,552/- (Two crores sixty-one lakhs eleven thousand five hundred and fifty-two rupees only) being the interest accrued on the said sum from 12th April, 2015 till 30th June 2022 calculated @ 18% per annum.

c) Further interest on Rs. 4,62,11,552 (Four crores sixty-two lakhs eleven thousand five hundred fifty-two rupees only) till realisation thereof.

d) Costs

e) Further and other reliefs.”

17. The said commercial suit is pending for adjudication. The civil suit has been filed by the opposite party no. 2 for recovery of money and its interest, therefore, the question of commission of a criminal offence does not arise. There is no element of any criminal offence. The opposite party no. 2 has filed the criminal case in the attempt to paint a civil suit in a criminal colour, which is apparently an abuse of process of law.

18. The Court is conscious that a case may have both a civil wrong and a criminal offence. It depends upon the facts of each case. In the present case, this court is unable to persuade that the allegation in the complaint constitutes any criminal offences punishable under Sections 406/420 read with sections 34 and 120B of the IPC. No cognizable offence was disclosed in the complaint against any of the accused persons. Furthermore, there is no element of

criminality in the commercial transaction or agreement between the parties. The amount received by the petitioners has allegedly been refunded to the opposite party no. 2, and, therefore, negates the contention of misappropriation of money. Even assuming for the sake of argument that the Petitioners have not refunded the said amount, the same would still not amount to a criminal offence.

19. To constitute cheating, there must be deception coupled with fraudulent or dishonest inducement at the inception of the transaction. The complaint, however, does not contain specific averments to demonstrate that, at the time of execution of the MOU, the petitioners had any dishonest intention not to perform their obligations. Subsequent developments, including exchange of a portion of land with HIDCO in 2020 for facilitating development, prima facie negate the allegation that the petitioners never intended to honour the agreement.
20. The principles laid down in ***Murari Lal Gupta (Supra)***, ***Uma Shankar Gopalika (Supra)*** and ***Vijay Kumar Ghai (Supra)***, to the effect that breach of contract simply does not constitute cheating in the absence of initial dishonest intention, are directly attracted to the facts of the present case. The ratio of these

decisions fortifies the conclusion that the essential ingredients of Section 420 of IPC are not disclosed.

21. The materials on record indicate that the dispute arises out of reciprocal obligations under the MOU. The complainant has also instituted a civil suit concerning the same transaction. The substance of the grievance pertains to alleged non-performance of contractual terms.
22. The caution administered in ***Indian Oil Corporation (Supra)***, that criminal proceedings should not be permitted to degenerate into instruments of coercion in commercial disputes, squarely applies to the present matter. The complaint appears to be an attempt to impart a criminal colour to what is essentially a civil dispute.
23. The Hon'ble Supreme Court in the case of ***Indian Oil Corpn. (supra)*** has held particularly in paragraph no. 12 (v) as follows:-

“A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the commercial proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not”.

- 24.** So far as the present case is concerned, the disputes between the parties are purely civil in nature. The complainant already availed for its remedy under the civil law by filing a commercial suit. At the same time, the complainant tried to entangle the petitioners in a criminal prosecution so that there is a possibility of an imminent settlement immediately.
- 25.** The ingredients required for an offence of Criminal Breach of Trust and Cheating have been highlighted by the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. & Ors vs. State of Uttar Pradesh & Anr.***¹⁴ in paragraph nos. 24 to 30 as under: -

*“24. This Court in its decision in **S.W. Palanikar & Ors. v. State of Bihar & Anr. reported in (2002) 1 SCC 241: AIR 2001 SC 2960** expounded the difference in the ingredients required for constituting an offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*

“9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

¹⁴ (2024) 10 SCC 690

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

In order to constitute a criminal breach of trust (Section 406 IPC): -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (**see: S.W.P. Palanitkar (supra).**)

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (**see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712: (2009) Cri.L.J. 3462 (SC)**)

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in **Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823: (AIR 1974 SC 301)** as under:

“4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal,

we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating.”

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct,

but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

26. The Hon’ble Supreme Court further laid down legal propositions of law with regard to the application of Sections 406 and 420 of the IPC in the said particular case as follows:-

“42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully

apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.”

27. Entrustment of property and dishonest misappropriation are sine qua non for an offence under Section 406 of IPC. The payment in question was made as part of a commercial development arrangement and not in a fiduciary capacity. There is no allegation that the amount was entrusted to the petitioners to be held in trust or for a specific purpose independent of contractual obligations.

28. In this context, the decisions relied upon by the learned counsel for the Petitioners in ***Alpic Finance Ltd. (Supra)*** and ***A.M. Mohan***

(Supra) are relevant and applicable, wherein it has been held that commercial transactions lacking the element of entrustment do not attract Section 406 of IPC.

- 29.** None of the ingredients of the alleged offence under sections 406/420/34/120B of IPC are fulfilled against the present petitioners; as such the proceeding pending before the Trial Court is a gross abuse of process of law, and to secure the ends of justice, the proceeding deserves to be quashed.
- 30.** Accordingly, **C.R.R. 3637 of 2022** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.
- 31.** The proceeding being CS/49908 of 2021 under sections 406/420/120B/34 of the IPC pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta is quashed insofar as the petitioners are concerned and order dated 24th August, 2021 is hereby set aside.
- 32.** Interim order(s), if any, stands vacated.
- 33.** Case Diary, if any, is also returned to the learned counsel appearing on behalf of the State.
- 34.** Let a copy of this judgment be sent to the Learned Court below for information and taking necessary action.
- 35.** Parties shall act on the server copies of this Judgment uploaded on the website of this Court.

- 36.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

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